

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

**ALICE KRAMER, as Personal Representative** :  
**of the Estate of Arthur Kramer,** :

**Plaintiff, :**

—against—

**LOCKWOOD PENSION SERVICES, INC.,** :  
**ET AL.,** :

**Defendants. :**

**PHOENIX LIFE INSURANCE CO.,** :

**Third-Party :  
Plaintiff, :**

—against—

**STEVEN LOCKWOOD,** :

**Third-Party Defendant.** :

**LIFE PRODUCT CLEARING LLC, and** :  
**JONATHAN S. BERCK** :

**Third-Party :  
Plaintiffs, :**

—against—

**LIZA KRAMER and ANDREW B. KRAMER, :**

**Third-Party :  
Defendants. :**

**Case No.: 08 CV 2429-DAB-MHD**

## ECF Case

## Oral Argument Requested

## NOTICE OF MOTION

PLEASE TAKE NOTICE that, based upon the accompanying memorandum of law, Defendant Lincoln Life & Annuity Company of New York (“Lincoln”) will move this Court before the Honorable Deborah A. Batts, at the Courthouse for the Southern District of New York, for an Order, pursuant to the doctrines of abstention and *forum non conveniens*, and

Federal Rule of Civil Procedure 12(b)(6), dismissing Defendant Jonathan S. Berck's Cross-Claims against Lincoln with prejudice.

Dated: August 25, 2008

DRINKER BIDDLE & REATH LLP

/s/ Elizabeth L. McLachlan

Elizabeth L. McLachlan (*pro hac vice*)

Michael J. Miller (*pro hac vice*)

Charles J. Vinicombe (*pro hac vice*)

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For Defendant Lincoln Life & Annuity  
Company of New York

**CERTIFICATE OF SERVICE**

I, Elizabeth L. McLachlan, hereby certify that on the date set forth below, I electronically filed the Notice of Motion, using the CM/ECF system, which will send notification of such filings to CM/ECF participants.

I also hereby certify that on the date set forth below, I submitted a courtesy copy of the aforementioned, marked as a courtesy copy, by overnight Federal Express to the following:

The Honorable Deborah A. Batts, USDJ  
United States Courthouse  
500 Pearl St., Room 2510  
New York, NY 10007  
(two copies)

/s/ Elizabeth L. McLachlan  
Elizabeth L. McLachlan (*pro hac vice*)  
Drinker Biddle & Reath LLP  
One Logan Square  
18<sup>th</sup> and Cherry Sts.  
Philadelphia, PA 19103

Dated: August 25, 2008